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January 29, 2014

FREEDOM OF INFORMATION ACT REQUEST

Via Email and Overnight Mail

FOIA Officer
Office of Air and Radiation
U.S. Environmental Protection Agency Headquarters
William Jefferson Clinton Building North
1200 Pennsylvania Avenue, N.W., Room 5406A
Washington, D.C. 20004
OAR_Comments@EPA.gov

**Re: Contracts Referenced in EPA's Technical Support Document for the EGU
GHG NSPS Proposed Rule, Docket ID No. EPA-HQ-OAR-2013-0495**

Dear FOIA Officer:

This letter is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and its implementing regulations. This letter seeks information on behalf of the Sierra Club relating to EPA's proposed Electric Generating Unit Greenhouse Gas New Source Performance Standard ("EGU GHG NSPS"), Docket ID No. EPA-HQ-OAR-2013-0495. Specifically, this request seeks two particular documents that allegedly may form the basis for a determination as to whether the proposed Holcomb power plant in Kansas has "commenced construction" for purposes of the EGU GHG NSPS. Because this request seeks only two specific documents, we expect EPA to respond fully to this request within 20 days as required by the FOIA.

FOIA REQUEST

In a technical support document for the proposed EGU GHG NSPS, titled "Fossil Fuel-Fired Boiler and IGCC EGU Projects Under Development: Status and Approach," *available at* regulations.gov, Docket ID No. EPA-HQ-OAR-2013-0495 (hereinafter "TSD"), EPA discusses the status of projects under development including the Holcomb plant in Kansas. *Id.* at 9-10. EPA notes that the developers of the Holcomb project have "informed EPA that the developer considers the project to have commenced construction for NSPS purposes. The developer had previously submitted comments on the April 2012 GHG NSPS proposal stating that contracts for

both the steam generator (i.e., the boiler) and the steam turbine/electricity generator had already been awarded.” *Id.* at 9. In the developers’ 2012 comments, the developers state that “Tri-State, following complete evaluations by Bläck & Veetch, has awarded the turbine/generator purchase contract to Toshiba International Corporation, Power Systems Division, and has awarded the steam generator purchase contract to IHI, Inc.” *See* Comments of Tri-State Generation & Transmission Association, to Janet McCabe, Principal Deputy Assistant Administrator, EPA Office of Air and Radiation, Feb. 13, 2013, *available at* regulations.gov, Docket ID No. EPA-HQ-OAR-2013-0495, and cited in the TSD at n.22, p.9.

EPA notes that it is not making a determination in the current proposed rule as to whether the plant has commenced construction, *see* TSD at 10, but notes that EPA “anticipates resolving the development status and proposing a CO₂ standard” for the Holcomb project, among others, “at the time of finalization of the current proposal.” *Id.* at 21.

A. Documents Requested:

Sierra Club is requesting complete copies of the two contracts that are described above, including any appendices, exhibits, attachments or addenda of any kind, and that are referenced in EPA’s support document as follows:

- (1) The contract for “the steam generator (i.e., the boiler),” *see* TSD at 9; and
- (2) The contract for “the steam turbine/electricity generator,” *id.*

If EPA determines that either of these documents contains any confidential business information, we expect EPA to provide a redacted copy of the document, rather than withhold it in its entirety. Consistent with the requirements of FOIA, we expect EPA to redact as little of the documents as possible. For example, redacting specific payment amounts may be appropriate, but redacting other terms of the agreement—in particular contingencies regarding delays, options, and terms related to modifications of the contracts or cancellation of plans for construction—would not be.

FEE WAIVER REQUEST

We request a fee waiver of all search and copying fees associated with this request. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.19(b). FOIA mandates that agencies waive search and copying fees where disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). We provide the following information relating to the public benefits associated with our request and the entitlement of Sierra Club to a fee waiver in this matter.

A. The Documents Relate to Governmental Activities and Operations or Issues of Great Public Interest.

EPA's proposed Electric Generating Unit Greenhouse Gas New Source Performance Standard affects the level of climate-changing pollution allowed from the largest source category of greenhouse gas emissions in the country. EPA's obligation under the Clean Air Act to develop such standards has been in the center of the public debate for years and has been the subject of multiple court opinions, including a landmark Supreme Court decision. EPA's 2012 proposed rule elicited hundreds of thousands of public comments, and this revised proposal is likely to elicit similarly high levels of public comment and participation. The requested records relate to the EPA's anticipated determination of whether the proposed Holcomb plant—which itself has been the subject of considerable public interest and controversy—actually has “commenced construction” and so is an existing source for the purposes of the proposed rule, or whether for purposes of that rule the Holcomb plant has not yet commenced construction and so is a new source. This determination may well affect the greenhouse gas emission limits that this proposed source must meet. The Sierra Club is concerned that sources such as the Holcomb plant not be exempted from new source greenhouse gas emission limits on the basis of unsupported claims that they have “commenced construction.” The Sierra Club believes that the proposed rule must be implemented to the fullest to ensure the maximum greenhouse gas emission reductions, and exempting large new sources runs counter to the purpose and need for the rule.

The Sierra Club has and expects to continue to participate fully throughout the public process for review of and changes to the proposed EGU GHG NSPS, including whether the proposed Holcomb plant should be treated as a new or existing source for purposes of the NSPS, in order to ensure that the most stringent and best emission limits are in place for greenhouse gas emissions. It is therefore critical that the public and Sierra Club and its members have a full understanding of, and opportunity to comment on, the basis for EPA's decision regarding whether the Holcomb plant is a new or existing source. The records sought in this request will contribute greatly to Sierra Club's and the public's understanding of this important decision and will serve to inform public review and comment on the proposed EPA rule.

B. Requesters Will Use and Disseminate the Requested Documents for the Public Benefit.

The Sierra Club and its members have a long-standing interest and expertise in the development and use of energy resources and these issues remain at the forefront of the Club's conservation efforts. One of the Sierra Club's priority national conservation campaigns is the campaign to promote smart energy solutions, and in particular to tackle the pressing problems of global warming, air pollution, and our national dependence on dirty, non-renewable energy

sources such as oil and coal and to promote the use of clean energy sources. This campaign organizes persons nationwide to work on energy and climate issues and educates the public on these issues. A current focal point of the campaign is to ensure that enforceable emission limits are developed for the largest sources of greenhouse gases, such as coal-fired power plants. The Sierra Club is well-qualified and well-situated to review the requested information, synthesize it, and disseminate it to the general public.

Sierra Club will disseminate the information it receives through FOIA regarding these government operations and activities through a variety of ways, including but not limited to analysis and distribution to the media, distribution through publication and mailing, posting on the Club's website, emailing and list serve distribution to our members. Each month, the Sierra Club website receives approximately 300,000 visits. Sierra Magazine, published bimonthly by the Sierra Club, reaches more than a million people across North America. Sierra Club Insider, an e-newsletter, is sent to over 812,000 people twice a month. In addition, Sierra Club disseminates information obtained through FOIA through comments to administrative agencies, and where necessary, through the judicial system. The Sierra Club has published, posted, and disseminated numerous articles on energy sources and alternatives.

Sierra Club's dissemination of information about the basis for EPA's determination regarding the status of the Holcomb plant will increase public understanding of the importance and impact of EPA's proposed rule and its application to specific projects. It will further increase public understanding of the regulatory process for this issue and will help foster participation by the public in the regulatory process, including, but not limited to, comments on EPA's proposed rule.

C. Requesters Will Not Benefit Financially From the Requested Information.

Sierra Club has no commercial interest in, and will not benefit financially from, the requested documents. Sierra Club is recognized by the federal government as a non-profit, public interest environmental organization. Sierra Club will use the records to participate, in the public's interest, in the various regulatory actions regarding EPA's proposed EGU GHG NSPS, and to inform the public about pollution and public health problems and the necessary regulatory actions for addressing the problems.

Based on the foregoing, we respectfully request a full fee waiver for production of the requested records.

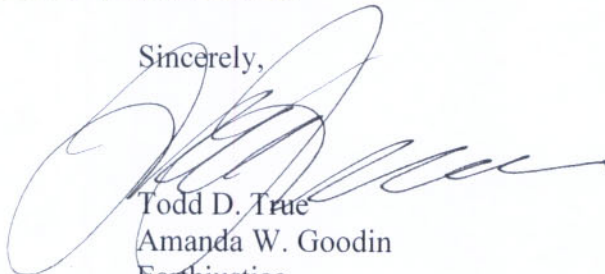
RECORD DELIVERY

Please deliver all records to the undersigned; electronic records are preferred where available. Please contact the undersigned should you have any questions regarding this request.

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U.S. Environmental Protection Agency
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As provided by the FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within twenty working days. Thank you in advance for your assistance.

Sincerely,



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